IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2768 of 2001
to
FIRST APPEALNo 2771 of 2001
with
FIRST APPEAL No 4236 of 2001
to
FIRST APPEAL No 4239 of 2001
with
CIVIL APPLICATION No 9718 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JIVATSINH AMARSINH GADHVI
Versus
SPECIAL LAND ACQUISITION OFFICER

Appearance:
MR KM SHETH for Appellants
MR ARUN D.OZA, GOVT.PLEADER for Respondent No. 1-2

CORAM : MR.JUSTICE B.C.PATEL

and

MR.JUSTICE SHARAD D.DAVE

Date of decision: 17/09/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. Admit. Mr. Arun D. Oza, learned Government Pleader and Mr. K.M. Sheth, learned counsel waive notice of admission in concerned group of appeals. These appeals are filed against the award made by the Reference Court on 4.9.99. Learned advocates appearing for the parties requested that the matters be heard and disposed of as the matters are covered by earlier decision of Division Bench of this Court. Hence, these appeals are taken up for final hearing. Record and proceedings have been called for by the Division Bench (Coram: J.N. Bhatt & A.H. Mehta, JJ) by an order passed in F.A. 2768 of 2001 on 4.7.2001.

#. Lands situated at village Kosam, Taluka Kapadwanj were the subject matter of notification published under Section 4 of the Land Acquisition Act (hereinafter to be referred to as "the Act") on 26.7.90, followed by notification under Section 6 of the Act published on 6.5.91. The lands were acquired for Narmada Project. Land Acquisition Officer made an award on 30.6.93 awarding Rs. 3.30 ps. per Are. Claimants being dissatisfied, sought references under the Act. The Reference Court (Joint District Judge, Kheda at Nadiad) on appreciation of evidence in Reference Case namely Land Reference Case Nos. 763 of 1994 to 766 of 1994, on 4th November, 2000, fixed the market price of the acquired land at the rate of Rs. 1500/- per Are. It goes without saying that other statutory benefits as available under the Act are to be paid to the claimants as held by the Reference Court and as per law laid down by the Apex Court. Claimants being dissatisfied with the said award made by the Reference Court, preferred these appeals. The State also being aggrieved by the said award has preferred these appeals.

#. As the subject matter is common, i.e. arising out of the same award, these matters are decided together. With regard to procedure followed for acquisition, there is no dispute and hence the that aspect is not discussed.

#. The claimants examined witness Jagatsinh at exh. 19 to point out as to what agriculturists were earning by sowing paddy, wheat etc. They were taking crops twice a

year. They have also pointed out that the lands of village were acquired for the purpose for which these lands were acquired. The lands were acquired for the main canal of Narmada Project. The Reference Court for the lands which were acquired awarded additional compensation at the rate of Rs. 1500/- per Are in Land Acquisition Reference No. 438/94. To substantiate the contention with regard to yield, village forms 7/12 vide exh. 10 were produced.

#. In the instant case, the Reference Court has relied upon an award made in Land Reference Case No. 438/94. That was the Reference with regard to the lands situated at village Kosam i.e. the same village. The attention of the Reference Court was drawn to the decision in the case of Land Acquisition Officer, Bharuch v. Mohanbhai, reported in 1998 (1) Land Acquisition Laws, P. 90, wherein it is pointed out that the award of the District Court in respect of the land of the same village can be taken into consideration. What we find in the instant case is that the Land Acquisition Reference No. 438/94 was the subject matter considered by the Reference Court. In that case, the lands were acquired under a notification dated 25.6.90. The Land Acquisition Officer awarded Rs. 3.30 ps. per sq. mt. whereas in the instant case, the Reference Court on appreciation of evidence placed before it awarded Rs. 15/- per sq. mt. It appears that the decision rendered by the Reference Court in the aforesaid case has been accepted by the government. Before us, a letter addressed by the Government Pleader as well as intra-departmental correspondence between the Executive Engineer and the General Manager, Sardar Sarovar Narmada Nigam Limited, dated 30.7.2000 was placed for consideration. Reading the same, it appears that it was clearly pointed out that the earlier Reference Court awarded Rs. 15/- per sq. mt. On appeal, the matter was remanded and the Reference Court, Nadiad awarded Rs. 19/per sq. mt. by order dated 30th April, 2001. Even at village Antroli near the village Kosam, lands were acquired in the same district and amount of Rs. 20/- was awarded. In the aforesaid Reference Case No. 438/94, the Reference Court considered the decision confirmed by the High Court. In para 16 of the Land Acquisition Reference No. 438/94, it is pointed out as under.

"After the remand of the case, the applicants has claimed the price of their land as per the rate which has been awarded by the Land Reference Court in respect of village Antroli and Dasalvada. Exh. 120 is the xerox copy of the

judgment of Hon'ble High Court delivered in First Appeal No. 4682/98 in respect of village Antroli of Kapadwanj Taluka. State Government, being aggrieved with the award passed by the Land Reference Court in Land Reference Case (Main) No. 356/94 preferred First Appeal and it was dismissed by the Hon'ble High Court on 30.4.1999. By this judgment, the Hon'ble High Court has confirmed the rate of Rs. 19/- per square meter. Exh. 121 is the xerox copy of certified copy of judgment of Hon'ble High Court given in First Appeal No. 4300/98, dated 17.5.1999 in respect of village - Lasundra of Kapadwanj Taluka and Hon'ble High Court has confirmed award of Rs. 20/- per square meter which is awarded by the Reference Court."

#. In view of what is stated hereinabove, on behalf of the claimants, it was urged that the amount of Rs. 15/awarded by the Reference Court must be increased. Learned counsel for the claimants submitted that the lands are of the same fertility. He further submitted that lands of this village Kosam were acquired and Rs. 19/- per sq. mt. came to be awarded by an award was confirmed by High Court and therefore, he submitted that there is no reason why the amount should not be increased. In view of the fact that the Reference Court awarded Rs. 19/- per sq. mt. for the agricultural land situated in the same village which were acquired under the notification under Section 4 of the Act, dated 25.6.90, there is no reason why the same amount should not be awarded to the claimants. Learned AGP appearing in these matters could not point out that if the lands at the same place are acquired, how different price can be awarded. It is required to be noted that when the lands were agricultural having equal fertility, there is no reason not to award the same amount which was awarded for the lands acquired under notification published under Section 4 of the Act on 25.6.90. In the instant case, lands were acquired under a notification published under Section 4 of the Act on 26.7.90. Therefore, obviously, the claimants' appeals are required to be allowed by awarding Rs. 19/- per sq. mt. instead of Rs. 15/- per sq.mt. Consequently, the State appeals are required to be dismissed.

#. In case of Thakarsibhai Devjibhai and others vs. Executive Engineer, Gujarat and another, reported in 2001 AIR SCW 2415, the Apex Court in a case where reliance was placed on the award with regard to lands acquired of the same village earlier, pointed out that when there is

sufficient evidence describing nature and situation of the acquired lands to be similar to acquired land of the same village and no evidence is led on behalf of the State to find difference between the two, interference by reduction of price is not sustainable.

#. In the present case, in view of evidence, the same price must be paid as the notifications published under Section 4 of the Act in case of lands acquired earlier and the present case are of the same year (to be precise, the gap is of a period of one month only).

#. In view of what is stated hereinabove, the appeals preferred by the State are dismissed with no order as to costs.

##. Mr. Sheth, learned counsel submitted that the State Government be directed to make the payment of compensation within a period of six months. He further submitted that atleast one half of the amount should be paid within three months. The request being reasonable, we direct that the State Government shall pay 50% of the amount within three months and thereafter remaining 50% shall be paid within next three months. The appeals filed by the claimants are allowed to the aforesaid extent. No order on Civil Application No. 9718/2001. The appeals filed by the State are dismissed.

[B.C. PATEL, J.] [SHARAD D. DAVE, J.]

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